

Notice of Allowability

Application No.

10/660,411

Examiner

Ted Kavanaugh

Applicant(s)

BYRNES ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the attached examiner's amendment.
2. ☒ The allowed claim(s) is/are 3,4,7-14 and 18.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date 11-6-2003, 2-7-2005
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Robert Hoge on Dec. 8, 2006.

The application has been amended as follows:

In claim 3, line 12, the phrase --substantially separating the upper from the interior cavity—has been added after "interior cavity".

In claim 3, line 13, "the mid-point" has been changed to --a mid-point--.

In claim 3, line 13, the phrase --wherein the coupling of the liner and upper will only cause skin abrasion in a foot arch area of the shoe—has been added before the period ". ".

In claim 9, line 7, the phrase --substantially separating the upper from the interior cavity—has been added after "interior cavity".

In claim 9, line 7, "to upper" has been changed to --to the upper".

In claim 9, line 8, "the mid-point" has been changed to --a mid-point--.

In claim 9, line 8, the phrase --wherein the coupling of the liner and upper will only cause skin abrasion in a foot arch area of the shoe—has been added before the period ". ".

There is no number claim 11 in the application and there is two claims numbered 12 and therefore the first "claim 12" has been renumbered --Claim 11--.

In claim 18, line 11, the phrase --substantially separating the upper from the interior cavity—has been added after "interior cavity".

In claim 18, line 11, "to upper" has been changed to --to the upper".

In claim 18, line 12, "the mid-point" has been changed to --a mid-point--.


In claim 18, line 12, the phrase --wherein the coupling of the liner and upper will only cause skin abrasion in a foot arch area of the shoe—has been added after "the shoe".

2. The following is an examiner's statement of reasons for allowance: The addition of the language "substantially separating the upper from the interior cavity" was to distinguish from elements such as interior straps, toe pieces, heel counter, etc. that exist between the upper and the interior cavity but only extend through a portion thereof wherein the liner of applicant extends throughout the entire shoe upper. It was agreed to put in the term "substantially" to slightly broaden the claims. The addition of the phrase "wherein the coupling of the liner and upper will only cause skin abrasion in a foot arch area of the shoe" was to distinguish from coupling (e.g. stitching) that existed at the arch area and at other areas of the foot. The idea of applicant's is the coupling of the liner and the upper is only at the arch (mid-point) of the shoe as shown in figure 2 and not at the other portions of the shoe wherein greater pressure exist between the foot and the coupling (e.g. stitching, seam); see page 5, lines 10-19 of the instant application. With respect to "linings", the Harris patent teaches the lining may be

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stitched at 10 but teaches it is also stitched in other areas to. The claims to the subcombination have been allowed and the same changes have been made to the non-elected claims and therefore the restriction is withdrawn and all of the claims are allowed. The original claims provide support for all the species being used in the same embodiment.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."


Ted Kavanaugh
Primary Examiner
Art Unit 3728

TK
December 9, 2006